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7 CAREN EHRET,
8 Plaintiff,
9 v.
10 UBER TECHNOLOGIES, INC.,
11 Defendant.

Case No. [14-cv-00113-EMC](#)

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**ORDER GRANTING IN PART AND
DENYING IN PART
ADMINISTRATIVE MOTIONS TO
FILE UNDER SEAL**

17 Docket Nos. 100, 103, 113

18 In connection with Plaintiff's motion for class certification, the parties have filed three
19 motions to file under seal. Docket Nos. 100, 103, 113. Plaintiff's motions to seal are based on
20 materials designated by Uber as confidential, and Uber has timely filed declarations in support of
21 each of the motions to seal. Docket Nos. 102, 115. The Court has reviewed those declarations,
22 and now grants in part and denies in part the administrative motions to seal.

23 A. Applicable Legal Standard

24 In determining whether to grant a motion to file under seal in a dispositive motion, the
25 Court "must conscientiously balance the competing interests of the public and the party who seeks
26 to keep certain judicial records secret." *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172,
27 1179 (9th Cir. 2006) (citation and internal modifications omitted). If the Court "decides to seal
certain judicial records, it must base its decision on a compelling reason and articulate the factual
basis for its ruling, without relying on hypothesis or conjecture." *Id.* (citation omitted).
"Compelling reasons sufficient to outweigh the public's interest in disclosure and justify sealing
court records exist when such court files might have become a vehicle for improper purposes, such
as the use of records to gratify private spite, promote public scandal, circulate libelous statements,
or release trade secrets." *Id.*

28 "A 'good cause' showing under Rule 26(c) will suffice to keep sealed records attached to

1 non-dispositive motions.” *Id.* at 1180. This lower standard applies “for a *sealed discovery*
2 *document* attached to a *non-dispositive* motion [because] the usual presumption of the public’s
3 right of access is rebutted.” *Id.* at 1179 (citation omitted). *Id.* at 1179. The rationale is that “the
4 public has less of a need for access to court records attached only to non-dispositive motions
5 because these documents are often unrelated, or only tangentially related, to the underlying cause
6 of action.” *Id.* Thus, “[t]he public policies that support the right of access to dispositive motions,
7 and related materials, do not apply with equal force to non-dispositive materials.” *Id.*

8 In determining whether a motion for class certification is a dispositive motion, district
9 courts have noted that “[t]he Ninth Circuit has not ruled as to whether a motion for class
10 certification is a dispositive motion for the purposes of determining whether the compelling
11 reasons standard applies.” *English v. Apple Inc.*, Case No. 14-cv-01619-WHO, 2015 U.S. Dist.
12 LEXIS 104017, at *4 (N.D. Cal. Aug. 6, 2015) (citation omitted). While the courts in this district
13 generally treat motions for class certification as nondispositive, they have also acknowledged that
14 a motion for class certification can be dispositive where the “denial of class status means that the
15 stakes are too low for the named plaintiffs to continue the matter.” *Id.* (citation omitted). Thus, in
16 *English*, the district court applied the compelling reasons standard because the individual damages
17 were “sufficiently limited that it is not plausible that she would continue to litigate the case if
18 certification is denied.” *Id.* at *5. Here, because the Court does not deny class status, the motion
19 arguably is not dispositive and the Court will apply the good cause standard. Even if the
20 compelling reason standard were applied, the results below would not differ. *See Kamakahi v.*
21 *Am. Soc'y for Reprod. Med.*, Case No. 11-cv-01781-JCS, 2015 U.S. Dist. LEXIS 117234, at *3
22 (N.D. Cal. Sep. 2, 2015).

23 B. Plaintiff's Opening Motion

24 1. Exhibit C

25 The Court denies the motion to seal with respect to Exhibit C. In its declaration in support
26 of Plaintiff's motion to seal, Uber does not argue that Exhibit C should be sealed. In any case, the
27 information in Exhibit C has largely been publicly filed by Uber as part of its own exhibits. *See*
28 Docket No. 106 (Mohrer Dec.), Exh. A; Docket No. 107 (Holt Dec.), Exh. A; Docket No. 108

1 (Penn Dec.), Exh. A. References to Exhibit C in Plaintiff's memorandum of points and authorities
2 must be unredacted.

3 2. Exhibits D and H

4 The Court denies the motion to seal with respect to Exhibits D and H. Uber contends that
5 the e-mail messages were generated by Uber's internal engineering and software development
6 tracking systems, and contains information about Uber's proprietary internal database
7 management systems while discussing software engineering issues. However, the e-mails do not
8 appear to contain any proprietary information about the database management system, but reads as
9 a normal e-mail. Furthermore, the e-mails are relevant to the merits of the case, discussing the tip
10 calculations that are at issue here. References to Exhibits D and H in Plaintiff's memorandum of
11 points and authorities must be unredacted.

12 3. Exhibit E

13 The Court denies the motion to seal with respect to Exhibit E, but finds that Exhibit E may
14 be filed with appropriate redactions. Exhibit E is a spreadsheet containing the driver number,
15 name, and earnings. Uber contends that the information is proprietary to Uber and the individual
16 drivers identified in the spreadsheet. The Court finds that the majority of the document may be
17 redacted -- including the specific numbers, names, and earnings by the individual drivers -- as this
18 concerns privacy interests. However, the pertinent information at line 1 of every page, which
19 labels the columns as "net," "gross," "metered fare," "metered + 12% tip," and "minus 2% cc
20 charge" should not be redacted, as this is relevant to the merits of the case.

21 4. Exhibit F

22 The Court grants the motion to seal with respect to Exhibit F, on the ground that it contains
23 Uber's sensitive, proprietary business strategy and financial information.

24 5. Exhibit G

25 The Court denies the motion to seal with respect to Exhibit G, which is an e-mail thread
26 that discusses updating the website and app to reflect changes to the default gratuity. Uber argues
27 that it involves a user interface change and contains internal discussion regarding the
28 implementation of that change. However, it does not appear that this is proprietary information, as

1 it only describes changes that will be made to publicly viewed webpages and the Uber app. There
2 are no strategic discussions of why the change is being made, and the one substantive comment
3 comes in response to the changes that are being implemented, rather than contributing to Uber's
4 strategy for making the change in the first place. References to Exhibit G in the Memorandum
5 should be unredacted.

6. Exhibit J

7 The Court grants the motion to seal with respect to Exhibit J. Uber argues that Exhibit J
8 contains information about the number of trips taken during the proposed class period, and that
9 such information would permit its competitors to estimate Uber's financial information. District
10 courts have found that where sales volume is at issue, compelling reasons to seal the information
11 have been shown, as such information could be used to harm competitive standing. *See TriQuint*
12 *Semiconductor v. Avago Techs., Ltd.*, No. CV 09-1531-PHX-JAT, 2011 U.S. Dist. LEXIS 143942,
13 at *12-13 (D. Az. Dec. 13, 2011).

14 However, not all references to Exhibit J in Plaintiff's memorandum of points and
15 authorities need be redacted. Specifically, on page 4, lines 20 and 23-24, Plaintiff redacts "one
16 million" with respect to the estimated number of potential class members. On that same page, line
17 22, Plaintiff also redacts the exact number of rides given between April 1, 2012 and March 25,
18 2013. The precise number may be redacted, but the general number on lines 20 and 23-24 may
19 not given that this number is vague and unspecific.

20 7. Exhibit O, P, Q, R, and S

21 The Court grants the motion to seal with respect to Exhibits O, P, R, and S because these
22 exhibits concern internal discussions about Uber's proprietary business strategy, including pricing
23 and marketing decisions. Thus, there is a good and compelling reason to seal these documents.
24 However, Exhibit Q must not be submitted under seal. Exhibit Q is comprised solely of a draft of
25 a blog post, which is largely the same as that which is publicly available on Uber's website at
26 <http://newsroom.uber.com/2012/07/choice-is-a-beautiful-thing/> (last accessed October 20, 2015).
27 The exhibit contains no strategy regarding the contents of the blog post, and there are no
28 comments about the draft. Because the Court denies the motion to seal with respect to Exhibit Q,

1 references to Exhibit Q in Plaintiff's memorandum of points and authorities must be unredacted.

2 C. Uber's Opposition

3 1. Arthur Roberts Declaration, Exhibits A and B

4 The Court grants Uber's motion to seal, specifically to redact the names, addresses,
5 telephone numbers, and e-mail addresses of users of the Uber App, as well as the e-mail addresses
6 of Uber employees. The Court has "recognize[d] the non-party's privacy interests, and finds that
7 such an interest can be appropriately balanced with the public's right to access by redacting
8 personal identifying information . . ." *O'Connor v. Uber Techs., Inc.*, Case No. C-13-3826 EMC,
9 2015 WL 355496, at *2 (N.D. Cal. Jan. 27, 205). While the Uber employees are employed by a
10 party in this case and have a lower privacy interest, their specific e-mail addresses are not relevant
11 to the merits of the motion of this case. Exhibits A and B may be filed under seal.

12 2. Arthur Roberts Declaration, Exhibit D and Allen Penn Declaration, Exhibit C

13 The Court denies Uber's motion to redact these two exhibits. Uber seeks to redact
14 Plaintiff's e-mail address. However, there is little privacy interest because Plaintiff has already
15 publicly filed exhibits with her unredacted e-mail address. *See* Mot. Exh. A.

16 D. Plaintiff's Reply Memorandum

17 The Court grants the motion to seal with respect to Exhibits C1 through C5. Again, Uber
18 seeks to redact the names and e-mail addresses of Uber employees and Uber users, as well as
19 pickup and drop-off locations and payment information. As explained above, the Court finds that
20 the privacy interests implicated warrant redaction.

21 However, the motion to seal is denied with respect to Plaintiff's Reply Memorandum. The
22 Reply Memorandum quotes from the substantive portions of Exhibits C1 through C5, but does not
23 use any of the identifying information of Uber users or employees that the Court will allow to be
24 redacted. Thus, the Reply Memorandum must be publicly filed without any redactions.

25 **IT IS SO ORDERED.**

26 Dated: December 2, 2015



27 EDWARD M. CHEN
28 United States District Judge